

**AUDITOR OF STATE BULLETIN 96-002
JANUARY 4, 1996**

TO: ALL TOWNSHIP TRUSTEES
ALL TOWNSHIP CLERKS
ALL INDEPENDENT PUBLIC ACCOUNTANTS

SUBJECT: TOWNSHIP GROUP HEALTH INSURANCE

Purpose

The purpose of this Bulletin is to inform townships of how the Auditor of State's Office will review group insurance benefits provided by townships for their trustees, clerk, and employees pursuant to Ohio Rev. Code § 505.60.

Effective Date

The following standards for the audit evaluation of township group insurance shall become effective January 1, 1996.

Overview

This Bulletin is in response to the numerous questions the Auditor of State's Office has received concerning township provided or reimbursed group insurance and what is "uniform" for the purposes of Ohio Rev. Code § 505.60. Ohio Rev. Code § 505.60 provides that a township may "procure and pay all or any part" of a group insurance policy for its township trustees, clerk, and employees. The statute requires, however, that the coverage provided must be "uniform" for such trustees, clerk, and full-time employees.

This Bulletin will address three different health insurance situations: (1) where the township procures a group plan; (2) where the township procures a group plan but the insurance carrier excludes one or more employees from coverage or the employee is eligible but elects not to participate; and (3) where the township elects not to procure a group plan.

1. Group Plan

The Auditor of State will consider a group health plan "uniform," in accordance with Ohio Rev. Code § 505.60, if the plan offers the same coverage to all trustees, the clerk, and full-time employees. The township may choose which types of coverage to offer its trustees, clerk, and employees as long as the coverage is of the types listed in Ohio Rev. Code § 505.60. The coverage provided may be hospitalization, surgical care, major medical care, disability, dental care, eye care, medical care, hearing aids, prescription drugs, or sickness and accident insurance, or a combination of any of the above. Note that "uniform" does not require that the premiums paid by the township for each trustee, clerk, or employee be exactly equal. 1992 Op. Att'y Gen. No. 92-068. Only the type of coverage offered must be the same, not the amount of the premiums paid.

2. Group Plan But One or More Employees Excluded or Elect Not to Participate

If a township elects to procure a group plan and a township trustee, clerk, or employee is denied

coverage by the township's group health insurance carrier or is eligible but elects not to participate in the plan, it is the Auditor of State's position that the township may obtain health insurance benefits for the trustee, clerk, or employee from a different health insurance provider as long as the coverage is the same as that provided to the other trustees, clerk, and employees in the group plan. 1990 Op. Att'y Gen. No. 90-053. Alternatively, it is the Auditor of State's position that a township may reimburse a trustee, clerk, or employee who has been denied coverage under the township's group plan, or an eligible trustee, clerk, or employee who elects not to participate in the plan, the out-of-pocket premiums for coverage obtained separately. Such reimbursement will be allowed up to the average premium the township is paying for all trustees, the clerk, and employees in the group plan. To the extent this position is in conflict with portions of 1990 Op. Att'y Gen. No. 90-053, the Auditor of State respectfully disagrees with those portions of the Opinion and declines to follow them.

3. No Group Plan

However, if the township trustees elect not to procure a group plan, it is the Auditor of State's position that under Ohio Rev. Code § 505.60 a township may reimburse trustees, the clerk, and employees for their out-of-pocket group insurance premiums¹ for insurance obtained elsewhere provided certain conditions are met. To the extent that this position is in conflict with 1992 Op. Att'y Gen. No. 92-068 and 1990 Op. Att'y Gen. No. 90-053, the Auditor of State respectfully disagrees with the portions of those Opinions disallowing such expenditures and declines to follow them. The conditions and procedures are as follows:

First, if a township elects to reimburse for out-of-pocket group insurance premiums rather than procuring a group plan, it must do so by a resolution². The resolution must specifically state that the township has chosen not to procure a group plan and is opting for reimbursement instead.

Second, the resolution must provide for a maximum amount per person per month or per year up to which the township will pay. In other words, the resolution should set a "not to exceed" reimbursement amount.

Third, the resolution must list the types of coverages for which the township will reimburse and offer all trustees, the clerk, and employees reimbursement for those coverages. Again, the coverage provided may be hospitalization, surgical care, major medical care, disability, dental care, eye care, medical care, hearing aids, prescription drugs, or sickness and accident insurance, or a combination of any of the above³. Coverages other than the types listed in Ohio Rev. Code § 505.60 cannot be reimbursed by the township.

Please remember that any enactment of a resolution to procure a group plan or to reimburse could result in an unlawful in-term increase in compensation for the trustees. In-term increases in compensation violate Ohio Const. Art. II, Section 20. An in-term increase in the amount of insurance benefits a trustee receives is considered an in-term increase in compensation. 1981 Op. Att’y Gen. No. 81-099. However, an increase in the cost of coverage without a corresponding increase in benefits is not improper under Ohio Const. Art. II, Section 20. Id. Therefore, any changes in group insurance benefits provided to township trustees that were intended to take effect after January 1, 1996 must have been passed before December 31, 1995 so that the new township trustees taking office may be eligible.

If a township is currently reimbursing its trustees’, clerk’s or employees’ out-of-pocket premiums and has never passed a resolution authorizing the practice, the Auditor of State’s Office will require a resolution memorializing this past practice to be passed at the first meeting of township trustees after receipt of this bulletin. However, if no resolution is passed this could constitute an unlawful in-term increase subject to citations or findings for recovery in subsequent audits.

If the township currently has no reimbursement procedure or group insurance plan and would like to reimburse or procure a group plan after January 1, 1996, the reimbursement resolution or group plan cannot cover the trustees and clerk until at least January 1, 1998. If given effect earlier, the resolution or group plan would constitute an unlawful increase in compensation and the Auditor of State will issue a citation for non-compliance for the townships 1996 and 1997 audits. When passing a reimbursement resolution or procuring a group plan for the first time, townships must stagger the effective dates of the plan or resolution so as to cover those trustees elected at different times. Trustees and clerks winning election or re-election in November 1995 and taking office in January 1996 cannot be reimbursed or participate in a group plan until they are re-elected and take office again in January 2000. Trustees and clerks who took office in January 1994 cannot be reimbursed or participate in a group plan until they are re-elected and take office again in January 1998.

If you have any questions, please contact Jennifer C. Budde, Assistant Chief Legal Counsel toll free at 1-800-282-0370 or directly at 1-614-728-7244. For your information, a sample reimbursement resolution and a copy of Ohio Revised Code § 505.60 are attached.

¹The contemplated reimbursement applies only to employee out-of-pocket group insurance premiums, not out-of-pocket costs associated with deductibles or health care costs paid directly by the employee.

²Note that the passage of resolutions is not limited to this scenario. The Auditor of State also strongly encourages townships to pass resolutions when procuring a group plan or providing coverage or reimbursement for an employee excluded from the group plan.

³For example, if the township’s resolution provides for reimbursing only for hospitalization, surgical care, major medical and prescription drugs, then regardless of whatever additional coverages or benefits an employee’s privately obtained group plan may include, those coverages are the only ones for which the township may reimburse. If any employee’s privately obtained group plan also charges him/her an out-of-pocket premium for dental care and/or eye care, then the township may not reimburse for that separate premium charge.